

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LUIS HERRERA,

Defendant.

No. 11-CR-4013-DEO

**ORDER ACCEPTING REPORT
AND RECOMMENDATION
CONCERNING GUILTY PLEA**

I. INTRODUCTION AND BACKGROUND

On February 16, 2011, a six count Superseding Indictment (Docket No. 13) was returned in the above-referenced case. Defendant Luis Herrera was named in Counts 1-6.

Count 1 of the Superseding Indictment charges that on or about July 29, 2010, in the Northern District of Iowa, Luis Herrera and a co-defendant, did knowingly and intentionally distribute 5 grams or more of actual (pure) methamphetamine, a Schedule II controlled substance, within 1,000 feet of a playground, that is, The Boys and Girls Homes, 2101 Court Street, located in Sioux City, Woodbury County, Iowa.

This was in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B) and 860.

Count 2 of the Superseding Indictment charges that on or about August 17, 2010, in the Northern District of Iowa,

defendant Luis Herrera and a co-defendant did knowingly and intentionally distribute a mixture or substance containing a detectable amount of methamphetamine, a Schedule II controlled substance, within 1,000 feet of a playground, that is, The Boys and Girls Homes, 2101 Court Street, located in Sioux City, Woodbury County, Iowa.

This was in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(C) and 860.

Count 3 of the Superseding Indictment charges that on or about August 26, 2010, in the Northern District of Iowa, defendant Luis Herrera did knowingly and intentionally distribute 5 grams or more of actual (pure) methamphetamine, a Schedule II controlled substance, within 1,000 feet of a school and playground, that is, St. Michael's School and Leeds Playground, located in Sioux City, Woodbury County, Iowa.

This was in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B) and 860.

Count 4 of the Superseding Indictment charges that on or about October 20, 2010, in the Northern District of Iowa, defendant Luis Herrera and a co-defendant did knowingly and intentionally distribute 5 grams or more of actual (pure)

methamphetamine, a Schedule II controlled substance, within 1,000 feet of a school and playground, that is, St. Michael's School and Leeds Playground, located in Sioux City, Woodbury County, Iowa.

This was in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B) and 860.

Count Five of the Superseding Indictment charges that on or about February 15, 2011, in the Northern District of Iowa, defendant Luis Herrera and a co-defendant did knowingly and intentionally distribute 5 grams or more of actual (pure) methamphetamine, a Schedule II controlled substance, within 1,000 feet of a school and playground, that is, St. Michael's School and Leeds Playground, located in Sioux City, Woodbury County, Iowa.

This was in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B) and 860.

Count Six of the Superseding Indictment charges that from a date unknown but prior to April 2010, and continuing through February 2011, in the Northern District of Iowa and elsewhere, defendant Luis Herrera and two co-defendants, did knowingly and unlawfully combine, conspire, confederate, and agree with

each other and others whose identities are both known and unknown to the Grand Jury, to commit offenses against the United States, to-wit: knowingly, intentionally, and unlawfully possessing with the intent to distribute 50 grams or more of actual (pure) methamphetamine, a Schedule II controlled substance, within 1,000 feet of a school and playground, that is, The Boys and Girls Home, 2101 Court Street, St. Michael's School, and Leeds Playground, located in Sioux City, Woodbury County, Iowa, in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(A) and 860.

This was in violation of Title 21, United States Code, Section 846.

On April 12, 2011, defendant Luis Herrera appeared before Chief United States Magistrate Judge Paul A. Zoss and entered a plea of guilty to Counts 1-6 of the Superseding Indictment.

The Report and Recommendation (Docket No. 44, 04/12/2011), states that the Defendant is pleading guilty pursuant to a plea agreement (Sealed at Docket No. 41-1), and Chief United States Magistrate Judge Paul A. Zoss recommends that defendant Luis Herrera's guilty plea be accepted. Waivers of objections to Judge Zoss's Report and

Recommendation were filed by each party (Docket Nos. 45 and 46). The Court, therefore, undertakes the necessary review to accept defendant Luis Herrera's plea in this case.

II. ANALYSIS

A. Standard of Review

Pursuant to statute, this Court's standard of review for a magistrate judge's Report and Recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge].

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for review of a magistrate judge's Report and Recommendation on dispositive motions and prisoner petitions, where objections are made as follows:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommendation decision, receive further evidence, or recommit the matter to the

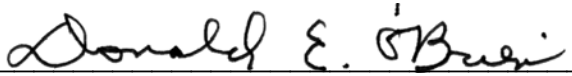
magistrate judge with instructions.

FED. R. CIV. P. 72(b).

As mentioned, waivers of objections to the Report and Recommendation have been filed, and it appears to the Court upon review of Chief Magistrate Judge Zoss's findings and conclusions that there are no grounds to reject or modify them.

IT IS THEREFORE HEREBY ORDERED that this Court accepts Chief Magistrate Judge Zoss's Report and Recommendation (Docket No. 44), and accepts defendant Luis Herrera's plea of guilty in this case to Counts 1-6 of the Superseding Indictment (Docket No. 13).

IT IS SO ORDERED this 14th day of June, 2011.



Donald E. O'Brien, Senior Judge
United States District Court
Northern District of Iowa